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GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

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COMMISSION CASE NO. 23-96

SUBJECT: Unwarranted Privilege, Impairment of Objectivity, Appearance of Impropriety

FACTS: In her official capacity, the individual was employed by the office responsible for the proper conduct of all public elections within the county. The State employee contributed to the campaigns of partisan county political candidates and solicited funds and sold tickets for candidates on various occasions. The State employee also hired family members as

employees of the office that she supervised.

RULING: The Commission, in accordance with *N.J.A.C. 19:61-3.1(h)*, determined that there were indications that the State employee violated sections 23(e)(3), unwarranted advantage, (4), direct or indirect personal financial interest, and (7), appearance of impropriety, of the Conflicts Law.

REASONING: Generally, the Commission permits involvement in partisan political activities if there is no provision in the departmental code of ethics prohibiting such activity. State employees, however, may not use State time or resources in pursuit of such activities. Because the State employee had responsibility for the proper conduct of elections in her county, any involvement in partisan political activities and election campaigns could cause the public to seriously question whether the work of the office was compromised by a partisan perspective. Such questioning could undermine the integrity of the electoral process and negatively impact the ability of election officials at all levels of government to act with credibility.

With regard to the hiring of family members, under Commission precedent, State employees

The cases presented in "Guidelines" are designed to provide State employees with examples of conflicts issues that have been addressed by the Executive Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

are not permitted to directly supervise family members or take personnel actions that affect a family member. Records showed a pervasive pattern of hiring and supervising relatives.

The State employee entered into a consent order with the Commission.

COMMISSION CASE NO. 26-99

SUBJECT: Post-Employment, Appearance of Impropriety

FACTS: The former State employee was solicited for employment by a consulting firm that did business with an entity that he was involved with auditing in his official capacity. In his official capacity, the State employee was a team leader, participated in interviews, conducted financial reviews, and wrote reports on audit findings. In his role with the consulting firm, he acted as Executive Director of the entity that he audited.

RULING: The Commission determined that there were indications that the State employee's actions in connection with his seeking post-employment were violative of section 23(e)(7) of the Conflicts Law and authorized staff and counsel to draft a complaint.

The Commission also determined that his role with his current employer was not violative of the Section 17 post-employment restriction.

REASONING: With regard to Section 23(e)(7), the former State employee had interaction with his current employer while involved in State employment; he attended a meeting at which his current employer presented proposals; and he failed to disclose the solicitation to his supervisor and the Department Ethics Liaison Officer so that recusal procedures could be implemented.

When reviewing a post-employment matter, the Commission uses a two-pronged analysis: 1. Is the former employee representing, appearing for, negotiating on behalf of, or providing information or services not generally available to a party other than the State? 2. Was the former employee substantially and directly involved in the matter

in question?

With regard to Section 17, the State employee was not substantially and directly involved in the oversight and management of the entity that he audited during his State employment.

The former State employee entered into a consent order with the Commission.

COMMISSION CASE NO. 30-00

SUBJECT: Unwarranted Privilege, Appearance of Impropriety

FACTS: The State employee wrote to his private attorney using official stationery detailing out-of-pocket expenses related to a lawsuit brought against another State agency. The letter was written during State time and using State resources.

RULING: The Commission determined that a violation of the Conflicts Law had occurred but declined to take any action against the State employee with the understanding that he refrain from using official stationery for personal use in the future.

REASONING: The State employee's use of official stationery to communicate with his attorney does not fall under the permissible uses of official stationery set forth in the Commission's Guidelines.

With regard to section 23(e)(3) of the Conflicts Law, there was no evidence to suggest the letter written by the State employee was intended to secure any unwarranted privileges. The State employee believed it was a private communication to his lawyer and would not be disseminated to individuals outside of that office.

As to section 23(e)(7), appearance of impropriety, the referral of the letter to the Commission indicates that such an appearance was created. However, there were mitigating factors in that the use of the stationery appeared to have been inadvertent and the State employee recognized the impropriety of such use.

COMMISSION CASE NO. 32-00

SUBJECT: Outside Activity

FACTS: The Commission received a request for advice from a State employee regarding his participation in a program sponsored by an organization that received grant support from his agency. While the organization received funding from the State employee's agency, none of that funding was used for the program in question. The employee participated in the program prior to entering State service and routinely accepted an honorarium.

RULING: The Commission determined that the State employee may participate in the program, but should not accept any kind of honorarium, stipend or payment.

REASONING: It is unlikely that the State employee's objectivity and independence of judgment in the exercise of his official duties would be compromised by his participation in the program so long as he is not directly involved in the grant program. Nevertheless, there may be a perception by the public or entities competing for agency grants of an appearance of a conflict. The State employee was the administrative head of an agency that awards grants to the organization, and the organization, through one of its programs, pays individuals for their participation in the program.

COMMISSION CASE NO. 33-00

SUBJECT: Unwarranted Privilege, Appearance of Impropriety

FACTS: The Commission received an allegation that a State employee recommended her former professor for a no-bid contract with her agency.

The State employee had previously been enrolled in a course taught by the professor. She approached the professor about performing consulting work for her agency because of his knowledge of the subject matter. One other individual was considered for the contract.

RULING: The Commission did not find any evidence of violations of sections 23(e)(3), unwarranted privilege, and/or 23(e)(7), appearance of impropriety, of the Conflicts Law.

REASONING: The Commission reviewed the facts and circumstances and determined that as to section 23(e)(3), there was no indication that the State employee used her official position to secure an unwarranted advantage for herself or the professor. She had nothing to gain personally since she was no longer his student. The professor appeared to possess the credentials to perform the required consulting services.

As to section 23(e)(7), appearance of impropriety, the State employee complied with purchasing regulations. The professor's contract was not required to be publicly bid. Pursuant to *N.J.S.A. 52:34-9(a)*, advertising is unnecessary when the services to be performed are of a technical and professional nature. In addition, the State employee had no supervisory responsibilities in connection with the consulting contract.

COMMISSION CASE NO. 36-00

SUBJECT: Post-employment

FACTS: In his official capacity, the State employee oversaw the statewide delivery of services to Division clients. This included designing and overseeing the maintenance of the database which incorporated information regarding all active and closed cases of individuals receiving State services; maintaining a system of monthly reporting by staff members; delineating ongoing involvement with individuals receiving services and activities of staff on their behalf; and implementing a system of 7 day-24 hour services availability. The State employee planned to retire and proposed contracting with his State agency after retirement to administer and coordinate cases involving the program which he oversaw.

RULING: The Commission advised the State employee that his proposed activities administering and coordinating cases involving program applications was permitted under the section 17 post-employment restriction.

REASONING: The State employee's activities were permitted because he would not be representing a party other than the State in connection with his proposed post-employment activities.

COMMISSION CASE NO. 09-01

SUBJECT: Outside Activity

FACTS: The State employee appealed her Department's decision that her outside employment with an entity that did business with the facility at which she was employed represented a conflict of interest. In her official capacity, the State employee was responsible for the care of eight patients. In her outside position, she performed services for patients at the same State facility.

RULING: The Commission concurred with the Department's determination that the outside employment was not approvable under the Department's Code of Ethics and the Commission's precedent.

REASONING: Under Commission Precedent, State employees cannot provide outside services to the same individuals with whom they work in their official capacities and cannot work for an outside entity if they have the authority to refer clients to the outside employer.

RECUSAL PROCESS

The Commission recently adopted recusal rules, set forth at *N.J.A.C.* 19:61-7.1 et seq.

19:61-7.1 Purpose

The purpose of this subchapter is to provide State officials with guidance regarding the circumstances under which a State official must recuse himself or herself and procedures as to properly effectuating a recusal.

19:61-7.2 Scope

The rules in this subchapter apply to all State

officers and employees and to all special State officers and employees as defined in the Conflicts of Interest Law, *N.J.S.A.* 52:13D-13(b) and (e), which definitions are incorporated in *N.J.A.C.* 19:61-7.3.

19:61-7.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Person" means any natural person, association, organization, firm, partnership or corporation (*N.J.S.A.* 52:13D-13(f)).

"Recusal" means the process by which a person is disqualified, or disqualifies himself or herself, from a matter because of a conflict of interest.

"Relative" means a spouse, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, or first cousin, whether in whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such person.

"State agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State (*N.J.S.A.* 52:13D-13 (a)).

"State official" means any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, *N.J.S.A.* 52:13D-13(b) and (e).

19:61-7.4 Situations where recusal is required

(a) A State official must recuse himself or herself from a matter if he or she has:

1. Any financial interest, direct or indirect, that is incompatible with the discharge of the State

official's public duties; or

2. Any personal interest, direct or indirect, that is incompatible with the discharge of the State official's public duties.

(b) For purposes of (a) above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his/her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.

(c) An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of (a) and (b) above, depending on the totality of the circumstances. A State official should contact his or her agency ethics liaison officer or the Executive Commission on Ethical Standards for guidance in such cases.

(d) A State official must seek the advice of the State agency's counsel, agency ethics liaison officer or the Executive Commission on Ethical Standards as to the propriety of participation in a matter if any person requests that a State official recuse himself or herself from that matter. Oral advice, followed up by a writing, may be provided by the agency's counsel, the agency ethics liaison officer or the Executive Commission on Ethical Standards to avoid delay. Oral advice should subsequently be memorialized by a writing or by inclusion in public minutes.

EXAMPLES

The spouse of the Director of the Division of Solid and Hazardous Waste ("Division"),

Department of Environmental Protection, recently became a partner in ABC, an environmental consulting firm that represents clients before the Division. The Director must recuse himself from any involvement with ABC matters that come before the Division. The recusal must be memorialized in writing and conform to the standards of *N.J.A.C. 19:61-7.5* (b).

The Director of a program that regulates health insurance carriers has been approached about possible employment by a regulated entity. The entity does not currently have any specific cause, proceeding, application or other matter pending. The solicitation must immediately be disclosed to the Director's supervisor and the Department Ethics Liaison Officer to avoid a situation where the State official may appear to be using his/her official position to gain an unwarranted advantage. The circumstances surrounding the solicitation and the State official's official interactions with the entity must be reviewed before the official proceeds with any job-seeking activities. If it is determined that the State official may respond to the solicitation, he must recuse himself from any involvement with the entity in his official capacity. Such recusal must conform to the standards of *N.J.A.C. 19:61-7.5* (b).

Pursuant to *N.J.A.C. 19:61-3.1(e)*, if a member of the Executive Commission on Ethical Standards ("ECES") holds office or employment in the same Department which employs a State official named in an allegation, he or she must disqualify himself or herself from participation in any decisional process relating to that particular case. One of the ECES meeting agenda items is an allegation that a Department of Personnel employee has violated the Conflicts of Interest Law. Because the ECES Chairwoman is the Commissioner of the Department of Personnel, materials associated with this matter would not be forwarded to her. In addition, the Chairwoman would place her recusal and the reason for such recusal on the record at the meeting and leave the room during non-public deliberations.

A member of the Real Estate Commission ("REC") is a Director and past President of the

New Jersey Association of Realtors ("NJAR"). The NJAR currently opposes a regulation proposed by the REC, has submitted a letter outlining its position, and plans to attend the REC meeting to express its opposition to the regulation. Because the REC member is an officer of the NJAR, he must recuse himself from discussions and voting on the regulation in question.

19:61-7.5 Procedure for recusal

(a) If a State official finds, or is advised by agency counsel or the agency ethics liaison officer, that an incompatible financial or personal interest exists on a matter, the State official must recuse himself or herself from that matter or seek advice from the Executive Commission on Ethical Standards. The recusal must be absolute, that is, the State official must have no involvement with the matter from which he or she has recused himself or herself.

(b) All recusals, other than those provided for in (c) below, must be memorialized in writing. See the subchapter Appendix for samples. The writing must:

1. Specify the reason for and the date of the recusal;
2. Specify the duration of the recusal (which may be expressed in terms related to the pendency of the matter in the State agency);
3. Specify the effect of the recusal on the State official and his or her State agency (for example, that the State official is not to be contacted or involved or participate in any manner concerning the matter from which he or she has been recused);
4. Name the person who is to assume responsibility and authority for the matter from which the State official has been recused (if applicable); and
5. Be disseminated to all persons who might be affected by the State official's recusal and to the agency ethics liaison officer, who shall maintain

the writing for as long as the State official serves in his or her position.

(c) In the case of a State agency that maintains a public record of a proceeding, that is, a Board or Commission meeting, formal written recusal is not required; however, the following procedures must be followed:

1. To the extent feasible, meeting materials involving a matter from which the State official must recuse himself or herself should not be distributed to the State official;
2. At the subject meeting, the State official must place his or her recusal and the reason for such recusal on the record prior to any discussion of the matter; and
3. The State official must leave the room at a non-public portion of the meeting while the matter in question is under discussion.

Sample recusal statements are available at www.state.nj.us/lps/ethics.

Holiday Gifts and Parties. Because the holidays will soon be upon us, this issue of the newsletter includes the Commission's Guidelines Governing Receipt of Gifts and Favors and the Commission's position on attendance at holiday parties.

GUIDELINES GOVERNING RECEIPT OF GIFTS AND FAVORS BY STATE OFFICERS AND EMPLOYEES

1. Each department shall require full disclosure by employees to the office of the department head through the Ethics Liaison Officer upon receipt of a gift or any other thing of value, from a person, corporation, or association with whom they have had contact in their official capacity.
2. Each department should designate an Ethics Liaison Officer to monitor compliance with specific procedures under which officers and employees shall proceed upon receipt of a gift or any other thing of value, from a person,

corporation, or association with whom they have had contact in their official capacity.

3. All officers and employees should be instructed that any gift or other thing of value received from a person or corporation with whom they have had contact in their official capacity must be reported and remitted immediately to the Ethics Liaison Officer. Similarly, any favor, service, employment or offer of employment from such person or corporation must be reported immediately.

4. Unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the public in general, and gifts received as a result of mass advertising mailings to the general business public may be retained by the recipient or the recipient's department for general use if such use does not create an impression of a conflict of interest or a violation of the public trust. An impression of a conflict may be created, for example, if an employee of a regulatory agency uses a pocket calendar conspicuously marked with the name of a company that it regulates or if an office in a State agency displays a wall calendar from a vendor, creating the impression of an endorsement. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, the other paragraphs of these Guidelines govern.

5. The Ethics Liaison Officer shall determine whether the gift, favor, employment, offer of employment, or anything of value was given or offered with the intent to influence or reward the performance of the recipient's public duties and responsibilities, or whether it may be reasonably inferred to have been given or offered with the intent to influence the performance of his or her public duties and responsibilities, or whether the use of the item will create an impression of a conflict of interest or a violation of the public trust.

6. Upon a determination that there was an intent or it could be reasonably inferred that there was an intent to influence the performance of the recipient's public duties and responsibilities, or that the use of the item will create the impression

of a conflict or a violation of the public trust, the Ethics Liaison Officer shall return the gift or thing of value to the donor.

7. The Ethics Liaison Officer will have the responsibility of keeping the records of all such occurrences; names of the employees, individuals, and companies involved, and the final disposition of the gift or thing of value.

8. The assistance of the Director of the Executive Commission will be available to all Ethics Liaison Officers to aid them in the evaluation of individual cases.

Return of Gifts

If the Ethics Liaison Officer determines that a gift cannot be accepted, the Commission staff recommends that, in the case of non-perishable items, the gift be returned to the donor along with a brief note thanking the individual and advising that State ethics rules prohibit the acceptance of gifts.

Items of a perishable nature should be donated to a charitable organization. Listed below are the names of organizations that have been provided to the staff by various Ethics Liaison Officers.

If you have an organization that you would like to place on this list, please contact Donna Schmitz at (609) 292-1892 or FAX at (609) 633-9252.

Anchor House
482 Center Street
Trenton, NJ 08611
Contact: David Brown
(609) 396-8329

Lift Inc.
225 North Warren Street
Trenton, NJ 08618
Contact: Alma Hill
(609) 695-5456

Martin House
802 East State Street
Trenton, NJ 08606
Contact: Father McCormick
(609) 989-1040

Triad House
2205 Pennsylvania Road
Ewing, NJ 08638
(609) 771-1600

Good Samaritan Center
523 Stevens Street
Camden, NJ 08103

Neighborhood Center
278 Kaighn Avenue
Camden, NJ 08103

Millhouse Convalescent Center
325 Jersey Street
Trenton, NJ 08611
Contact: Kelly Steele
(609) 396-5378

Trenton Soup Kitchen
72 1/2 Escher Street
Trenton, NJ 08605
Contact: Pierine Phayer
(609) 695-5456

Lighthouse Community Ser.
487 Washington Avenue
Newark, NJ
(973) 802-1802

Trenton Rescue Mission
P.O. Box 617
Trenton, NJ 08604
Contact: Executive Director
Leavenhouse
644 State Street
Camden, NJ 08102

Your Food Shelf
1500 Federal Street
Camden, NJ 08105

Cathedral Kitchen
15 N. 7th Street
Camden, NJ 08102

Make a Wish Foundation of NJ
P.O. Box 40281034

Salem Road
Union, NJ 07083
Contact: Norma Godwin
Executive Director
(908) 964-5055
1(800) 252-9474
FAX (908) 964-0082

El Centro
1035 Mechanic Street
Camden, NJ 08103

HOLIDAY PARTIES

The staff receives numerous inquiries during the holiday season about the appropriateness of State employees attending parties hosted by individuals or entities that their agencies deal with in an official capacity. The Commission's Attendance Rules, *N.J.A.C. 19:61-6 et seq.*, are applicable to the majority of these invitations because most are extended to the State official because of his/her official position. In considering whether approval to attend an event should be granted, the Department head or designee, usually the Ethics Liaison Officer, must determine whether the party's host is an "interested party" and whether a legitimate State purpose will be served by attending. An interested party is defined in *N.J.A.C. 19:61-6.2* as:

1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority of the State official's agency;
2. Any supplier, or employee, representative or agency thereof;
3. Any organization that advocates or represents the positions of its members to the State official's agency; or
4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

A "person," as used in the definition, is a natural person, association, organization, firm, partnership or corporation. A "supplier" is a

private sector person that is providing or seeking to provide or may reasonably be expected to supply goods and/or services to the State official's agency, including but not limited to, consultants, vendors and lessors.

In the case of purely social events sponsored by an interested party, the rule indicates that State officials cannot attend as guests of the sponsor.

Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to

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